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June 26, 2003

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: January 9, 2003

Case Number: TSO-0021

This Decision concerns the eligibility of XXXXX XXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy Operations Office (DOE) suspended the individual's access authorization under the provisions of Part 710.^{2/} As set forth in this Decision, I have determined on the basis of the evidence and testimony presented that the individual's security clearance should not be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE and its contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

^{2/} On September 11, 2001, the DOE issued revisions of the Part 710 regulations, amending procedures for making final determinations of eligibility for access authorization. 66 Fed. Reg. 47061 (September 11, 2001). The revised regulations were effective immediately upon publication and govern the present Decision.

unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual was granted a security clearance by DOE as a condition of his employment with a DOE contractor. However, the DOE Office of Safeguards and Security (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on October 11, 2002, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections f, h and l. More specifically, the Notification Letter alleges that the individual: 1) "deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Position and Personnel Security Questionnaire" (Criterion F); 2) "has an illness or mental condition of a nature which in the opinion of a board-certified psychiatrist causes, or may cause, a significant defect in his judgment and reliability" (Criterion H); and 3) "engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security." (Criterion L). The bases for these findings, as stated in the Notification Letter, are summarized below.

Citing Criterion F, the Notification Letter states that the individual failed to disclose psychiatric treatment and counseling that he received from 1986 to 1987 on a Personnel Security Questionnaire (PSQ) he executed on April 18, 1988, or on subsequent Questionnaires for National Security Position (QNSP) that he completed on July 13, 1993, on August 4, 1994, and on July 20, 1995. The Notification Letter further states that during a Personnel Security Interview (PSI) conducted with the individual on March 28, 2002, the individual admitted that he intentionally omitted this information from his PSQ and QNSPs.

Regarding Criterion H, the Notification Letter states that on June 11, 2002, the individual was evaluated by a DOE consultant psychiatrist (DOE Psychiatrist) who diagnosed the individual with a mental condition, specifically Exhibitionism, that causes a defect in the individual's judgment and reliability. According to the report of the DOE Psychiatrist, the individual meets all of the criteria for Exhibitionism in that for a period greater than six months, he has had recurrent intense sexual arousing fantasies, sexual urges and behaviors involving exposure of his genitals to an unsuspecting woman. The individual has acted on these urges, causing him emotional distress, interpersonal problems and legal difficulties. The Notification Letter further notes that the individual has been evaluated and diagnosed with Exhibitionism on

three previous occasions, including by: (1) a clinical psychologist who treated the individual from June 1986 to May 1987; (2) a clinical psychologist (Staff Psychologist) on staff with the individual's employer, who evaluated the individual and issued a report in April 2002; and (3) a clinical psychologist to whom the individual was referred to by the Staff Psychologist, and also issued a report in April 2002.

Finally, with regard to Criterion L, the Notification Letter states that during the PSI, the individual admitted that he has knowingly engaged in a pattern of criminal behavior, specifically indecent exposure, and that from the beginning of 2002 until the date of the interview, he had exposed himself probably one hundred times to women between the ages of 18 and 35 years old. The individual acknowledged during the PSI that in 1986, he was investigated by the police regarding a complaint that he had exposed himself to a teenage female, but he was not charged because he was in therapy at the time. However, in March 2002, the individual was charged with the offense of Public Indecency following an incident and a warrant was issued for his arrest.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on January 9, 2003, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On January 13, 2003, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist. Apart from testifying on his own behalf, the individual called the Staff Psychologist, his supervisor and a licenced clinical social worker (Therapist) who is presently treating the individual. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "Exh.".

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual began working for a DOE contractor in 1974 and was granted a DOE security clearance as a condition of his employment. The individual maintained his security clearance for nearly thirty years by completing the required security questionnaires and undergoing periodic reinvestigations. However, on March 2, 2002, the individual was arrested and charged with Public Indecency. The individual immediately reported the arrest to his employer, which referred the individual to its Staff Psychologist. The Staff Psychologist evaluated the individual on March 7, 2002. The individual was also referred to DOE Security, which conducted a PSI with the individual on March 28, 2002. During his evaluation by the Staff Psychologist and

during the PSI, the individual revealed that the circumstances underlying to his March 2002 arrest were not isolated but emblematic of a pattern of behavior engaged in by the individual since 1986.

The individual's March 2002 arrest resulted from an incident when the individual admittedly parked his car in a residential neighborhood for the purpose of stripping naked below the waist and then suddenly opening the car door and exposing his genitals to an unsuspecting female. The exposing of his genitals to females in this manner sexually stimulates the individual who receives an erection and usually masturbates to ejaculation before driving away. The individual targeted attractive females between the ages of 18 and 35. The individual estimates that he engaged in this conduct one hundred times during the year preceding his arrest. On this occasion in March 2002, however, a male resident of the neighborhood observed the individual sitting naked below the waist in his car. The resident pursued the individual in his vehicle and called the police after blocking the individual's car on a dead end street.

The individual's apparently began acting out of his sexual fantasy of exposing himself to startled females nearly twenty years ago. In June 1986, the individual began seeing a psychiatrist who diagnosed the individual with Exhibitionism. This psychiatrist had 36 sessions with the individual, ending in May 1987. While undergoing treatment in 1986, the individual was involved in an incident in which he exposed himself to a teenager who took down his license plate number and reported the individual to the police. However, the police elected not to pursue criminal charges against the individual in the 1986 incident based upon the individual's assurance that he would continue in psychiatric treatment. The individual concedes that the psychiatric treatment he received from June 1986 through May 1987 was unsuccessful, and his pattern of exposing himself to women escalated in the ensuing years. The individual intentionally did not report the psychiatric treatment he received for Exhibitionism in 1986-87 on a PSQ he completed in 1988, or on QNSPs he completed in 1993, 1994, and 1995, for reinvestigations to maintain his access authorization.

Pursuant to his evaluation of the individual in March 2002, the Staff Psychologist issued a report dated April 16, 2002, in which he diagnosed the individual with Exhibitionism and Chronic Anxiety. In his report, the Staff Psychologist states that the individual shows poor insight and judgment with regard to his exhibitionism, and that this mental illness does cause a significant defect in the individual's judgment and reliability. The Staff Psychologist stated that the individual appeared to have a good prognosis due to his apparent openness and honesty during the evaluation process. However, the report further states that exhibitionism usually requires at least one year of weekly therapy with less frequent maintenance thereafter, but notes that exhibitionism is difficult to eliminate and some reoccurrence and setbacks are not unusual. The Staff Psychologist decided to refer the individual to another psychiatrist (Referral Psychiatrist) having greater expertise treating sexual disorders. The

Referral Psychiatrist concurred with the Staff Psychiatrist, also diagnosing the individual with Exhibitionism and Chronic Anxiety. The individual could not continue treatment with the Referral Psychiatrist due to financial restraints imposed by his health insurance carrier. The individual was therefore referred to a licensed clinical social worker (Therapist) specializing in the treatment of Exhibitionism and sexual disorders. The individual has remained in treatment with the Therapist since May 2002. The Therapist initially met with the individual in private weekly sessions and then placed the individual in sex offender group therapy. The individual's sex offender group meets in weekly sessions lasting an hour and a half.

In June 2002, the individual was referred to the DOE Psychiatrist by DOE Security based upon the information received during the PSI. In his report, the DOE Psychiatrist expresses his opinion that the individual has an illness and mental condition, Exhibitionism, that is causing a defect in judgment and reliability. In this regard, the report notes that the individual has admitted to having distracting sexual fantasies in the workplace and to engaging in repeated criminal behavior, indecent exposure, outside of the workplace. The DOE Psychiatrist considers the individual to be a security risk since he is untrustworthy and potentially susceptible to exploitation and blackmail if a future incident occurred. The DOE Psychiatrist believes that it is essential that the individual continue to pursue treatment, including medication and psychotherapy. The DOE Psychiatrist agreed with the opinions expressed by previous psychiatrists who evaluated the individual that the individual's prognosis is guarded and that the individual should continue in weekly treatment for a minimum of one year, with continued follow-up at longer intervals thereafter.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of

denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria F; Falsification

The individual admits that he intentionally omitted information that he had received psychiatric treatment for Exhibitionism during 1986-1987 from a PSQ he completed in April 1988, and from several QNSPs he completed in July 1993, August 1994 and June 1995.^{3/} During the PSI, the individual stated that he withheld the information because "I felt like it wasn't any of [DOE's] business." Exh. 11 at 111. The individual stated further that "I didn't feel that I was gonna be a security threat . . . [and] I guess I was afraid I'd lose my job." *Id.* at 111-12.

The basis for DOE Security's concern with the individual's intentional falsification of his security questionnaires is obvious. The filing of false documents by an individual in the course of determining eligibility for DOE access authorization raises serious issues of honesty, reliability and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,515 (1995);

^{3/} The record indicates that the 1988 PSQ and August 1994 QNSP were completed by the individual to initiate security clearance reinvestigations, while the July 1993 and June 1995 QNSPs were completed by the individual to maintain his eligibility under the Personnel Security Assurance Program (PSAP), 10 C.F.R. Part 710, Subpart B. *See* Exh. 8.

Personnel Security Hearing, Case No. VSO-0281, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000).

Under the circumstances of this case, I find that DOE Security properly invoked Criterion F. Moreover, I find little to mitigate the individual's intentional omission of critical information, i.e. his psychiatric treatment, from his PSQ and QNSPs. If the individual had not been arrested in March 2002 for Public Indecency, there is no reason to believe that the individual would have ever come forward with this information.

The DOE Psychiatrist explained during his testimony that the individual's failure to disclose his psychiatric treatment on the security questionnaires was "pretty normal" and "most of the people I have seen with these kinds of conditions don't tell the truth about it as part of their illness." Tr. at 26. The DOE Psychiatrist now sees a willingness in the individual to discuss his illness and conduct open and honestly. Tr. at 22. During his testimony, the individual corroborated the opinion of the DOE Psychiatrist, explaining that he now believes that hiding his psychiatric treatment from DOE was a part of his mental condition, but "I think I'm different now. I think for the first time in my life I have been able to be completely honest." Tr. at 88. Notwithstanding, I do not find that the individual has fully mitigated the security concerns attached with the falsification of his security questionnaires. It is apparent that the individual has made progress during his therapy, resulting in greater honesty with regard to his exhibitionism. Nonetheless, as explained in greater detail below, the individual is not nearly rehabilitated from his mental condition and thus the root cause of his dishonesty remains.

B. Criterion H & L; Mental Condition/Unusual Conduct

The record is undisputed in this case that the individual has a mental condition, Exhibitionism, which causes a significant defect in his judgment and reliability. The individual has been diagnosed with Exhibitionism by four board-certified mental health professionals, including the psychiatrist who treated the individual in 1986-1987, his employer's Staff Psychologist who evaluated the individual in April 2002, the Referral Psychiatrist who also evaluated the individual in April 2002, and finally by the DOE Psychiatrist who evaluated the individual in June 2002.^{4/} This mental condition has manifested itself in criminal conduct, Indecent Exposure, that the individual admittedly engaged in hundreds of times over the past fifteen years. During this time period, the individual was not only hiding his exhibitionism from DOE but

^{4/} The DOE Psychiatrist explained during his testimony that his diagnosis as well as the diagnosis of the Referral Psychiatrist were based upon criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*. Tr. at 23-24.

from his wife.^{5/} The individual therefore may have been susceptible to blackmail or other exploitation. I therefore find that DOE Security properly invoked Criterion H and Criterion L in suspending the individual's security clearance. I turn to whether the individual has presented sufficient mitigating evidence to overcome the security concerns associated with his mental condition and associated behavior.

The Staff Psychologist, DOE Psychiatrist and the individual's Therapist share the view that the individual has a number of positive indicators that he might one day achieve rehabilitation from his exhibitionism. They concur that since his arrest in March 2002, the individual has displayed openness and honesty in discussing his behavior and he appears to be highly motivated to do whatever is required to achieve rehabilitation. Tr. at 20-22, 44.^{6/} The individual has a strong support from his family, particularly his wife who takes part in some of the individual's therapy sessions. Tr. at 44, 65. In addition, the DOE Psychiatrist and Therapist noted that the individual is very religious and his faith is a highly motivating factor in his life. *Id.* Finally, I found the individual to be forthright and convincing when testifying that unlike the previous treatment he underwent during 1986-87, he is now fully committed to doing what is necessary to stop the behavior that led to his arrest. Tr. at 91-93.

However, the record is equally clear that the individual is far from being rehabilitated from his exhibitionism. Tr. at 33-35, 46. The DOE Psychiatrist recommended in his report that the individual's course of treatment entail weekly therapy for a minimum of one year, with continued follow-up at longer intervals thereafter. Exh. 7 at 9. At the hearing, however, the DOE Psychiatrist deferred to the judgment of the Therapist with regard to recommended treatment, in view of the greater experience the Therapist possesses in treating this type of behavior. Tr. at 105-06. According to the Therapist, the individual is "very early in treatment" and advised that the individual remain in treatment for at least two years, explaining that "sex offender treatment is long-term because it involves so much." Tr. at 61-62. The Therapist further explained that the individual's treatment at this stage involves primarily group therapy to make the

^{5/} The record indicates that the individual's wife has been aware of his problem since 1986 when he first received treatment. *See* Exh. 7 at 3. However, the individual hid his increasing exhibitionism from her during the years preceding his arrest, realizing the pain and anguish it causes her. *See* Exh. 11 (PSI) at 35-36, 70. Nonetheless, the individual's wife was not surprised on March 2, 2002, when he informed her that he had been arrested for Indecent Exposure. *Id.* at 71.

^{6/} The DOE Psychiatrist suggested that the individual might consider taking medication to control obsessive sexual impulses. Tr. at 26. The individual's Therapist was surprised that the individual was not already on medication and stated that she would discuss this option with the individual. Tr. at 68. The individual testified that he is willing to take medication if his Therapist deems it appropriate to control his exhibitionism. Tr. at 99.

individual more aware about his exhibitionism, and “[the individual] has not started a relapse prevention plan yet.” Tr. at 63.^{7/} Since the risk of relapse remains high at this stage of the individual’s treatment, the Therapist requires patients to submit to “maintenance polygraphs.” Tr. at 66. The individual had a polygraph examination in March 2003 and the Therapist stated that the individual would have another polygraph in four months. Exh. Tr. at 74.^{8/}

The individual agreed with the assessment of the Therapist that he is in an early stage of treatment “and I don’t know how long it is going to take.” Tr. at 98. The individual conceded during his testimony that “I can’t tell you that I’m never going to do this again because that is just the nature of the illness and all I can tell you is that, in the foreseeable future a day at a time, I’m going to try to reclaim my life, hopefully, and never re-offend.” Tr. at 96. I highly commend the individual for his honesty and determination. However, the individual’s testimony confirms my finding that he is not yet rehabilitated from Exhibitionism,^{9/} and consequently the concerns of DOE Security under Criterion H and Criterion L are essentially unmitigated.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(f), (h) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the legitimate security concerns associated with these findings. I am therefore unable to find that restoring the individual’s access authorization would not endanger the

^{7/} The Therapist stated that a relapse prevention plan has not yet been structured for the individual because “he does not know enough about himself to do that, but that will come very soon and relapse prevention plans are individualized and evolving. As he knows more about himself, the plan will change and become much more specific and some of the earlier issues of risk will die away as he continues in treatment.” Tr. at 63.

^{8/} According to the Therapist, these polygraph examinations have proven to be very effective in detecting repeat behavior by sex offenders while in therapy. Tr. at 72-73. While the Therapist conceded that polygraph examinations are not infallible with regard to some persons, Tr. at 73-74, she believes that a polygraph examination would surely detect an episode of exhibitionism by the individual, stating that “[the individual] has a significant amount of guilt and shame and so I can’t imagine that his behavior would not be detected by polygraph.” Tr. at 81.

^{9/} The individual’s March 2003 polygraph examination did not detect any repeat episodes of exhibitionism by the individual. According to the report of the polygraph examiner, however, “there have been approx. 6 times that he was tempted to expose himself since last September.” Exh. 13.

common defense and security and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: June 26, 2003